

1 ROBERT S. MUELLER, III (CSBN 59775)
2 United States Attorney

FILED
FILED

May 9 12 38 PM '01

RICHARD M. JENNINO
CLERK
U.S. DISTRICT COURT
NO. DIST. OF CAL. S.D.

3
4
5
6
7
8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN JOSE DIVISION

11 **CR 01 20077 JF**

12 UNITED STATES OF AMERICA,

No.

13 Plaintiff,

VIOLETIONS: 18 U.S.C. § 1343 - Wire
Fraud

14 v.

SAN JOSE VENUE

15 ROBERT S. GORDON,

16 Defendant.

17
18 INDICTMENT

19 The Grand Jury charges:

20 Background

21 1. From September 5, 1995, to April 5, 2001, the defendant ROBERT S. GORDON was
22 employed at Cisco Systems, Inc. ("Cisco"). GORDON started with the company as a Director in
23 the Corporate Finance Department, and in March 1999, became a Director in the Business
24 Development Department. In November 2000, GORDON began to work in the position of Vice
25 President and Director of Business Development.

26 2. At all times relevant to Counts One and Two of the Indictment:

27 a. Cisco was a networking company headquartered in San Jose, California, that was
28 publicly traded on the National Association of Securities Dealers Automated Quotation System

INDICTMENT

1 market ("NASDAQ"), a national securities market.

2 b. Terayon Communications, Inc., Cabletron Systems, Inc., Microsoft Corporation and
3 Internet Security Services Group, Inc. ("ISS") were companies publicly traded on the NASDAQ.

4 c. Spanlink Communications was a start-up company affiliated with Cisco that at certain
5 times was publicly traded on the NASDAQ and at other times privately held.

6 GORDON's Position of Trust and Executive Responsibility at Cisco

7 3. While employed at Cisco as a Director in the Corporate Finance and Business
8 Development Departments and as a Vice President and Director of Business Development,
9 GORDON was placed in a position of trust and executive responsibility in which he had access
10 to and control over assets of Cisco during Cisco's investment in or acquisition of other
11 companies. GORDON also had actual or apparent authority to engage in financial transactions
12 on behalf of Cisco involving those assets.

13 GORDON's Embezzlement of Cisco Assets

14 4. GORDON used his position of trust at Cisco to transfer Cisco-owned stock and company
15 funds to himself by materially misrepresenting that the transfers were for the benefit of Cisco.
16 On the dates identified below, GORDON transferred the stock and company funds identified
17 below to himself at a bank account at Western International Securities, Inc., in Pasadena,
18 California, in the name of "Cisco Systems, Inc., Bahamas" that he had established without the
19 authorization of Cisco:

20 <u>Date of Transfer</u>	<u>Cisco Asset Taken</u>	<u>Value at Transfer</u>
21 09/24/1999	100,000 shares of Terayon stock	\$3,175,405
22 09/27/1999	26,372 shares of Microsoft stock	\$2,398,216
23 10/05/1999	7,234 shares of Cabletron stock	\$120,265
24 03/16/2000	30,206 shares of ISS stock	\$3,175,405
25 07/19/2000	Distribution of IVP Broadband Fund	\$2,806,503

26 GORDON'S Fraud on Spanlink

27 5. GORDON used his position of trust at Cisco to fraudulently induce Cisco to provide
28 \$15,000,000 to Spanlink so that he could fraudulently obtain \$5,000,000 from Spanlink, as

1 follows:

2 a. In his position at Cisco, GORDON was responsible for relations with Spanlink with
3 regard to Cisco's investment in or acquisition of that company. While GORDON was acting on
4 behalf of Cisco, during March and April 2000, Cisco provided \$45,000,000 to Spanlink in
5 exchange for equity in Spanlink.

6 b. In December 2000, the chairman of the board of Spanlink contacted GORDON and
7 requested that Cisco provide additional funding within three weeks in order to keep Spanlink
8 operational.

9 c. GORDON did not discuss the matter with members of Cisco's Business Development
10 or Treasury Departments. GORDON instead informed Spanlink that Cisco would not advance
11 additional funds to Spanlink, and proposed that he would arrange for funding for Spanlink
12 through a venture capital firm named Bay Star Capital. GORDON represented that Bay Star
13 Capital would provide \$5,000,000 immediately in return for equity in Spanlink at some time in
14 the future. As a result, Spanlink executed on December 6, 2000, a Stock Purchase Agreement
15 that provided that Bay Star Capital would provide \$5,000,000 to Spanlink for general corporate
16 purposes, in exchange for which Bay Star Capital would receive 50,000 shares of "Series B
17 Preferred Stock" of Spanlink. GORDON co-signed the agreement and accompanying documents
18 and materially misrepresented that he was doing so on behalf of Cisco.

19 d. Contrary to GORDON's representations to Spanlink and the terms of the agreement
20 provided to Spanlink by GORDON, the venture capital firm Bay Star Capital was not aware of
21 and had no involvement in the transaction. GORDON himself provided \$5,000,000 to Spanlink
22 in December 2000, by transferring the funds to Spanlink from the account at Western
23 International Securities, Inc., in Pasadena, California, in the name of "Cisco Systems, Inc.,
24 Bahamas" that he had established without the authorization of Cisco.

25 e. In March 2001, at GORDON's request, Cisco provided a \$15,000,000 loan to
26 Spanlink. In order to induce Cisco to provide this loan to Spanlink, GORDON misrepresented to
27 members of the Business Development and Treasury Departments at Cisco the intended use of
28 the funds. At the same time, GORDON told Spanlink that Cisco intended that Spanlink use

INDICTMENT

1 \$10,000,000 from the loan to redeem the Series B Preferred Stock of Spanlink given to Bay Star
2 Capital and to use the remaining \$5,000,000 as working capital. As a result, Spanlink transferred
3 \$10,000,000 to an account that GORDON controlled in Bermuda.
4

5 COUNT ONE: (18 U.S.C. § 1343)

6 6. Paragraphs One through Four are realleged and incorporated in Count One.

7 7. On or about and between August 1999 and April 2001, both dates being approximate and
8 inclusive, in the Northern District of California and elsewhere, the defendant

9 ROBERT S. GORDON

10 did devise and intend to devise a scheme and artifice to defraud and for obtaining money and
11 property by means of false and fraudulent pretenses, representations and promises.

12 8. It was part of the defendant's scheme and artifice to defraud that he would and did use his
13 position as a trusted employee at Cisco to fraudulently transfer Cisco-owned assets to himself, as
14 set forth in Paragraph Four.

15 9. On or about July 19, 2000, within the Northern District of California and elsewhere, the
16 defendant, for the purpose of executing the aforesaid scheme and artifice to defraud, did
17 knowingly transmit and cause to be transmitted by means of wire communication in interstate
18 commerce certain writings, signs, signals and pictures; that is, the defendant caused Redpoint
19 Ventures, located in Menlo Park, California to wire transfer \$2,806,503 through the Bank of New
20 York, located in New York, New York, to Western International Securities, located in Pasadena,
21 California.

22 All in violation of Title 18, United States Code, Section 1343.
23
24
25
26
27
28

INDICTMENT

1 COUNT TWO: (18 U.S.C. § 1343)

2 10. Paragraphs One through Three and Five are realleged and incorporated in Count Two.

3 11. On or about and between December 2000 and March 2001, both dated being approximate
4 and inclusive, in the Northern District of California and elsewhere, the defendant

5 ROBERT S. GORDON

6 did devise and intend to devise a scheme and artifice to defraud and for obtaining money and
7 property by means of false and fraudulent pretenses, representations and promises.

8 12. It was part of the defendant's scheme and artifice to defraud that he would and did use his
9 position of trust at Cisco to fraudulently induce Cisco to provide \$15,000,000 to Spanlink so that
10 he could fraudulently obtain \$5,000,000 from Spanlink, as set forth in Paragraph Five.

11 13. On or about March 12, 2001, within the Northern District of California and elsewhere,
12 the defendant, for the purpose of executing the aforesaid scheme and artifice to defraud, did
13 knowingly transmit and cause to be transmitted by means of wire communication in interstate
14 commerce certain following writings, signs, signals and pictures, that is, the defendant caused to
15 be sent by facsimile from his office at Cisco, in San Jose, California, to the offices of Spanlink in
16 Minneapolis, Minnesota, a letter purporting to represent that Cisco and Bay Star Capital were
17 effecting a redemption of Spanlink "Series B Preferred Stock."

18 All in violation of Title 18, United States Code, Section 1343.

19
20 DATED:

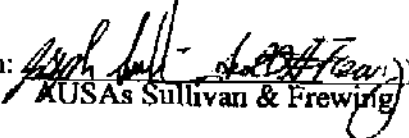
5/9/07

A TRUE BILL.

FOREPERSON

21
22
23 ROBERT S. MUELLER, III
24 United States Attorney

25 
26 ELIZABETH DE LA VEGA
27 Chief, San Jose Branch

28 (Approved as to form: 
KUSAs Sullivan & Frewing)

INDICTMENT